



IN THE

Supreme Court of the United States

JANUARY TERM, 1945

No.

EDWARD LOEW,

Petitioner and Appellant Below,

against

UNITED STATES OF AMERICA,

Respondent and Appellee Below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Courts Below

There was no opinion rendered by the Trial Court relating to the within petitioner. The opinion of the Circuit Court below (R. 257), rendered on November 8, 1944, is still unreported.

II**Jurisdiction****A**

The United States Circuit Court of Appeals for the Second Circuit made its order for mandate herein on November 27th, 1944 (R. 261).

B

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, U. S. Code, Section 347, subdivision a (*Judicial Code*, See. 240-a as amended), and Rule 38 of the Revised Rules (1939) of the Supreme Court of the United States.

C

The reasons stated in the preceding petition under II (pp. 4 and 5) are herewith adopted and made part of this brief, and are believed to constitute good grounds for invoking jurisdiction of this Court.

III**Statement of the Case**

A statement of the case has been made in the preceding petition under I (pp. 1 to 4), which is hereby adopted and made a part of this brief.

IV**Specification of Errors****A**

The Circuit Court erred in holding that the Trial Court correctly permitted proof against petitioner of the unrelated acts of wrongdoing, and of petitioner's alleged criminal disposition (Assignments of Error Nos. 3 and 4 (R. 247)).

B

The Trial Court's rulings on the objection to the admission of the evidence referred to in "A" hereof, and on petitioner's motion to strike the same from the record deprived petitioner of a fair trial upon the indictment (Assignments of Error Nos. 3 and 4 (R. 247)).

Statute Involved

The statute involved is the conspiracy statute (Title 18, Sec. 88, U. S. Code), which reads as follows:

"88. (Criminal Code, Section 37.) Conspiring to commit offense against United States.—If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R. S. Section 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, Section 37, 35 Stat. 1096.)"

Argument**A**

The Circuit Court erred in deciding that the witness Buckley's testimony as to petitioner's unrelated acts of wrongdoing and criminal disposition, thereby putting petitioner's character in issue, did not constitute reversible error.

The petitioner did not testify, nor was any evidence adduced in his behalf. The decision of the Circuit Court holding that testimony as to unrelated and unproved crimes allegedly committed by petitioner was proper, is in direct conflict with applicable law.

Boyd v. United States, 142 U. S. 450, 458 (1891);
Greer v. United States, 245 U. S. 559, 560 (1917);
Brown v. United States, 83 Fed. (2) 383 (C. C. A. 3, 1936);
Tedesco v. United States, 118 Fed. (2) 737 (C. C. A. 9, 1941);
Tinsley v. United States, 43 Fed. (2) 890 (C. C. A. 8, 1930);
Eley v. United States, 117 Fed. (2) 526 (C. C. A. 6, 1941);
Hilliard v. United States, 121 Fed. (2) 992 (C. C. A. 8, 1941);
Mackreth v. United States, 103 Fed. (2) 495 (C. C. A. 5, 1939).

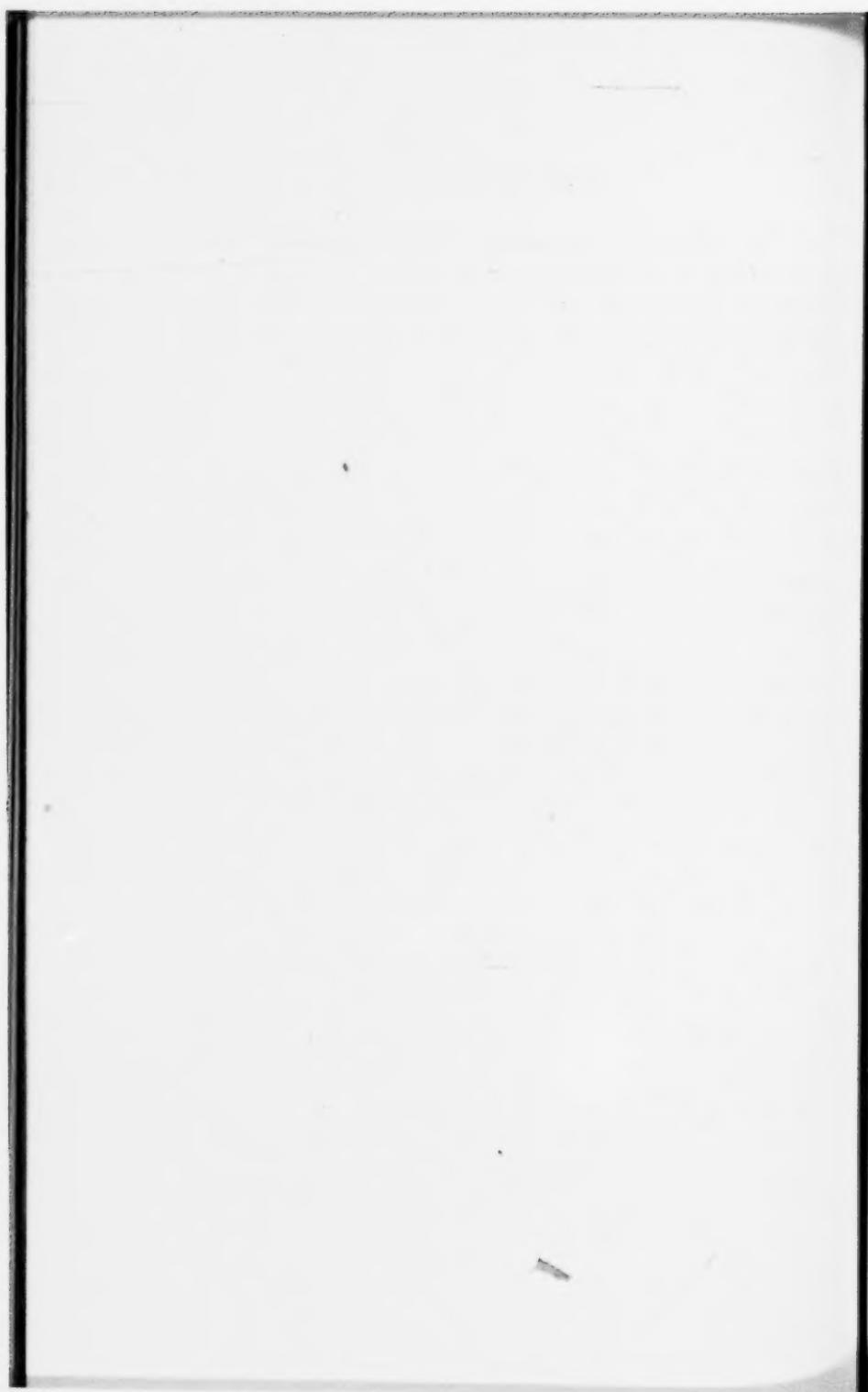
CONCLUSION

It is respectfully submitted that the question raised in this case is of sufficient importance to require this Court to issue a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review its decision made herein.

Respectfully submitted,

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Counsel for Petitioner.

ABRAHAM J. GELLINOFF,
Of Counsel.





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